

REMARKS

Applicants acknowledge receipt of an Office Action dated October 17, 2007. In this response, Applicants have amended claims 8, 9, and 10 to correct minor informalities. Following entry of these amendments, claims 1-11 remain pending in the application.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Rejection Under 35 U.S.C. § 112, 2nd Paragraph

On page 2 of the Office Action, the PTO has rejected claims 1, 8, 9, 10, and 11 under 35 U.S.C. § 112, 2nd paragraph as allegedly being incomplete for omitting essential structural cooperative relationships of elements. Applicants respectfully traverse this rejection.

As an initial matter, Applicants note that this rejection is ultimately based upon Applicants use of the phrase “charge-air/coolant radiator” in the referenced claims. Applicants wish to remind the PTO that, according to MPEP 2111.01, Applicants are entitled to be their own lexicographers, *i.e.* Applicants' are entitled to choose their own words when describing their invention. Applicants have used the phrase “charge-air/coolant radiator” throughout the specification and have provided an exemplary depiction of a “charge-air/coolant radiator” in Figure 3 which shows coolant both entering and leaving the “charge-air/coolant radiator” and which also shows charge-air both entering and leaving the same “charge-air/coolant radiator”. As used throughout the specification and in the drawings, the “charge-air/coolant radiator” refers to a single unit (not to 2 separate units either in the alternative or conjunctive as suggested by the PTO in the Office Action). The single unit “charge-air/coolant radiator” is also depicted in figures 1, 7, and 8.

Applicants note that the phrase “charge-air/coolant radiator” appears as “Ladeluft/Kühlmittel-Kühler” in the originally filed PCT text. This phrase may, alternatively, be translated as “charge-air/coolant cooler.”

In view of these remarks, Applicants submit that their use of the phrase “charge-air/coolant radiator” is clear and definite within the meaning of §112 and that it does not

result in claims which are incomplete for omitting essential structural cooperative relationships of elements.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 112.

Rejection Under 35 U.S.C. § 102 - Elmer

On page 2 of the Office Action, the PTO has rejected claims 1 and 3 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 4,176,630 to Elmer (hereafter “Elmer”). Applicants traverse this rejection for the reason set forth below.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Here, Elmer fails to disclose a circuit arrangement “wherein a temperature sensor is provided at the coolant outlet of the charge-air/coolant radiator or a short distance downstream for measuring the coolant outlet temperature” as recited in independent claim 1. With respect to the phrase “charge-air/coolant radiator,” Applicants refer to the discussion in their response to the §112 rejection above.

While Elmer discloses an arrangement in which a valve 26 with a sensing element 29 is positioned in the return flow passage from the normal engine coolant radiator 17, Elmer does not disclose a temperature sensor provided at (or a short distance downstream from) the outlet of a single unit which cools charge-air. Applicants note that Elmer discloses a second, separate air cooler 13 for cooling super-charged air. The valve 25 with a sensing element 27 shown in air passage 20 senses charge-air (as opposed to coolant) temperature.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 102.

Rejection Under 35 U.S.C. § 102 - Susa

On page 3 of the Office Action, the PTO has rejected claims 1, 2, 6, 9, 10 and 11 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent 5,353,757 to Susa (hereafter “Susa”). Applicants traverse this rejection for the reason set forth below.

As noted above, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Here, Susa fails to disclose a circuit arrangement “wherein a temperature sensor is provided at the coolant outlet of the charge-air/coolant radiator or a short distance downstream for measuring the coolant outlet temperature” as recited in independent claim 1. With respect to the phrase “charge-air/coolant radiator,” Applicants refer to the discussion in their response to the §112 rejection above.

While Susa discloses an arrangement in which a thermostat 18 is positioned in return pipe 14 from first radiator 7a, Susa does not disclose a temperature sensor provided at (or a short distance downstream from) the outlet of a single unit which cools charge-air. Applicants note that Susa discloses a second, separate intercooler 4 for cooling air compressed by the supercharger 2. Applicants note that Susa does not disclose a temperature sensor at (or a short distance downstream from) the coolant outlet from the intercooler 4.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 102.

Rejection Under 35 U.S.C. § 103

On page 6 of the Office Action, the PTO has rejected claims 4 and 5 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent 5,353,757 to Susa (hereafter “Susa”) in view of U.S. Patent 6,679,431 to Matthew (hereafter “Matthew.”) In addition, on page 7 of the Office Action, the PTO has rejected claim 8 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Susa in view of U.S. Patent 4,317,439 to Emmerling (hereafter “Emmerling.”) Applicants traverse these rejection for the reasons set forth below.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Here, Susa, Matthew and Emmerling, whether taken individually or in combination, fail to teach or suggest a circuit arrangement "wherein a temperature sensor is provided at the coolant outlet of the charge-air/coolant radiator or a short distance downstream for measuring the coolant outlet temperature" as recited in independent claim 1. With respect to the phrase "charge-air/coolant radiator," Applicants refer to the discussion in their response to the §112 rejection above." Applicants also refer to their discussion of Susa above in connection with their response to the outstanding §102 rejection. The additional references cited in the outstanding §103 rejections have been cited in connection with certain dependent claims and add nothing to resolve the fundamental deficiencies in Susa noted above. For at least this reason, Applicants submit that the outstanding rejections based upon the combination of Susa and Matthew and Susa and Emmerling are improper and ought to be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 103.

CONCLUSION

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

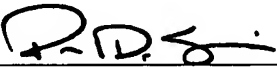
The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment,

to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 1/11/08

By 

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5540
Facsimile: (202) 672-5399

Paul D. Strain
Attorney for Applicants
Registration No. 47,369